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POSTAL REGULATORY COMMISSION
Washington, DC 20268-0001

Complaint of the Greeting Card Association   Docket No. C2020-2

COMPLAINT OF THE GREETING CARD ASSOCIATION

The Greeting Card Association (GCA) files this Complaint pursuant to 39 U.S.C. sec. 3662 and Part 3030 of the Commission's Rules of Practice. GCA, which comprises approximately 200 greeting card publishers and related companies, is the postal trade association which speaks for the individual household mailer. The greeting cards and other social stationery items which GCA members produce and the general public sends are characteristically mailed as Single-Piece First-Class Letters with postage paid by adhesive stamps. The present rate structure within Single-Piece, however, discriminates unduly and unreasonably against household mailers (stamp users), and thus violates 39 U.S.C. sec. 403(c), as well as the objective (sec. 3622(b)(8))[1] of establishing and maintaining a just and reasonable schedule of rates and classifications. It also has adverse consequences for achievement of some other objectives.

We discuss two preliminary requirements next below.

Required consultation (39 CFR sec. 3030.10(a)(9)). GCA counsel wrote to the General Counsel of the Postal Service on September 17, 2019, stating in general terms the subject matter of the potential complaint and requesting a meeting.

A meeting for this purpose was held on October 18, 2019, with members of the Postal Service legal and pricing staffs. GCA counsel outlined the scope and legal basis of the potential complaint, the issues it would raise, and the conclusions GCA would

[1] Section citations appearing alone refer to provisions of Title 39, U.S.C.

expect to establish. The Postal Service representatives undertook to consider GCA's issues and maintain contact.

We were informed that some features of the complaint, and associated potential solutions, were being taken up with the Postal Service's executive leadership. By e-mail of January 30, 2020, however, Postal Service counsel informed us that "it does not appear that the Postal Service is prepared at this time to offer any accommodation in response to GCA's concerns." We appreciate the Postal Service's willingness to consider possible mutually acceptable solutions. Should the present situation change in this regard, GCA would be willing to resume discussions. The Commission would of course be informed immediately of any such development.

Evidentiary issues (39 CFR sec. 303.10(a)(5) and (6)). Attachment I contains the discussion of evidentiary material required by these sections of the Rules of Practice.

Structure of the Complaint. In the following sections, we first outline the history of the Metered Letter rate, which is a main aspect of the motivation for this Complaint. We then show that the discrimination it effects is in fact a discrimination not merely between stamp users and meter users, but between households and businesses.

We then demonstrate that the Metered Letter rate creates an undue and unreasonable discrimination against household mailers, within the meaning of sec. 403(c). This is true for a number of reasons: briefly, (i) that it is not justified by cost differences between stamped and metered letters, (ii) that it has failed in its declared purpose of increasing the use of meters and the volume of metered letters, and (iii) that it is unreasonable in relation to the sec. 3622(b)(5) objective of adequate revenue and the sec. 3622(b)(1) objective of maximal incentives for efficiency. Since it is unduly discriminatory, the Single-Piece Letter rate structure which includes it is not just and reasonable (sec. 3622(b)(8)). Also because it violates sec. 403(c), it is not, as we explain below, an appropriate exercise of the Postal Service's pricing flexibility (objective (b)(4)). Its further effect in enabling the excessive ten-percent increase in the Stamped Letter price, also a subject of this Complaint, is explained.

We then discuss the question – also relevant to the issue of unreasonable sacrifice of revenue – of how the Metered Letter rate, as currently administered, affects Presort rates and revenues. In this connection, we outline a way in which these adverse effects could be alleviated. The final section outlines the relief requested.

Throughout the Complaint, we have discussed the effect of the decision in *Carlson* v. *Postal Regulatory Commission,* 938 F.3d 337 (D.C. Cir., 2019), on the topic under consideration. It remains true, and highly important, that the primary legal basis of this Complaint is distinct from the one advanced by Carlson and considered by the Court of Appeals.

I. HISTORICAL DEVELOPMENT

A. Docket R2013-10

The Postal Service introduced the Metered Letter rate in Docket RM2013-10, a price-cap filing which accompanied its request for an exigent increase pursuant to sec. 3622(d)(1)(E) (Docket R2013-11). At that time, metered letters[2] had already been established (Order No. 1320, in Docket RM2010-13) as the benchmark for construction of worksharing rates – a point whose relevance we explain in a later section. Under the R2013-10 filing, letters eligible for the Metered Letter rate would be charged $0.01 less than non-eligible letters; that is, the rate for non-eligible letters, only, would be increased by one cent. The Postal Service explained that only stamped and PVI letters would be ineligible; all other indicia forms would qualify for the rate break.[3]

[2] In this Complaint, we have adopted the convention of capitalizing “Metered Letters” when referring to mailpieces specifically eligible for the Metered Letter rate. Letters bearing meter indicia – regardless of the rate(s) involved – will be written without the capitals (“metered letters”). The more specific term "Metered" refers to all pieces eligible for the Metered Letter rate, and "Stamped" to those not eligible (i.e., letters bearing stamps or PVI indicia).

[3] Docket R2013-10, *United States Postal Service Notice of Market-Dominant Price Adjustment,* p. 18.

GCA filed comments[4], raising issues similar to those raised in this Complaint. We relied mainly on the "just and reasonable schedule" requirement of sec.3622(b)(8), though we emphasized that the new price benefited only businesses, at the expense of household mailers. In Order No. 1890, the Commission postponed consideration of GCA's arguments until the relevant Annual Compliance Review.[5]

Docket R2013-10 began a pattern which has continued throughout the history of the Metered Letter differential: a complete absence of argument or data tending to show (i) that the differential does not exceed the difference in cost between Metered and Stamped Letters, (ii) that it has been effective in increasing the use of meters, (iii) that it has succeeded in increasing either the relative or the absolute volume of Metered Letters, or (iv) that it did not merely extend a rate break to meter users who were already metering all the Single-Piece letters they sent or could be expected to send. GCA has emphasized this dearth of information in successive comments[6], but without result.

The Postal Service had characterized the Metered Letter rate as promotional. It claimed potential benefits[7] in the form of reduced operating costs, savings in stamp distribution and inventory, and reduction in losses due to stamp theft. None of these benefits was quantified; none was argued for in a way which suggested that they *could* be quantified. Subsequent proceedings showed no improvement. Today, we still do not know how, if at all, the Postal Service decided that the sacrifice of revenue would be

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[4] Docket R2013-10, *Comments of the Greeting Card Association;* see especially pp. 3-8. In those Comments, GCA also argued that the "new price" (as the Postal Service described it) was really a classification change subject to the requirements for such an action, and that the design of the Metered Letter rate was irrational. Neither of those issues is raised in this Complaint.

[5] Order No. 1890, p. 51.

[6] Besides those filed in Docket R2013-10 (fn. 4, above), further GCA comments of interest here were submitted in Dockets ACR2013, ACR2014 (see subsection B., below), R2017-1, and ACR2016 (subsection C., below).

[7] It also speculated that there could be benefits to the meter users themselves. Since the present Complaint alleges undue and unreasonable discrimination in favor of this group (shown below to be essentially identical with business mailers), these benefits, if they exist, would prove nothing. Insofar as the alleged benefits stemmed from the use of meters – rather than from the reduced rate itself – mailers then using meters were already enjoying them. On this point, see section II.F.2, below.

justified by operational benefits. (See section II.E., below, for a demonstration that it is not.)

B. Docket No. ACR2014

Since the Metered Letter rate was not in effect in FY 2013, the first ACR proceeding in which GCA's postponed arguments could be meaningfully considered was Docket ACR2014.[8]

GCA's comments in Docket ACR2014 updated our prior arguments, and in addition cited sections 3622(b)(1) (maximizing efficiency incentives) and (b)(5) (adequate revenue) as objectives hampered by the Metered Letter rate. The American Postal Workers Union (APWU), which had similarly objected to the differential ab initio, also cited sec. 403(c) as a basis for eliminating it. We acknowledged the practical benefit – short-lived, as it turned out – of the reduction of the differential to a half-cent, but did not waive our arguments against it.

The Commission decided these issues as follows:

> *The Commission has not determined that a workshare relationship exists between Stamped and Metered Letters. To conclude that the Postal Service violated 39 U.S.C. §403(c), the Commission must find that the price discrimination between Stamped and Metered Letters is either "undue or unreasonable." The Commission approved the establishment of the Metered Letters price in DocketNo.RM2013-10, based on a rational explanation presented by the Postal Service that supported pricing Stamped and Metered Letters differently. The same reasons justify its continuation. Furthermore, the Commission finds that the price differential between Stamped and Metered Letters is an appropriate exercise of the Postal Service's pricing flexibility.*[[9]]

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[8] GCA's comments in Docket ACR2013 recognized that the challenged rate was not in issue, and simply explained what information the Postal Service should be expected to file in the FY 2014 proceeding, in order to help resolve the issues we had raised.

[9] *Annual Compliance Determination Report, Fiscal Year 2014,* p. 68.

The first quoted sentence is not centrally relevant to the present Complaint, but the rest of the paragraph is. We do argue that the Commission should find the price discrimination between Stamped and Metered Letters undue and unreasonable. And for reasons, inter alia, of statutory structure, an undue and unreasonable discrimination *cannot* qualify as "an appropriate exercise of the Postal Service's pricing flexibility." All this is explained starting in section II, below.

As in earlier dockets, there was still no information on the cost effect of metering nor on the effect of the differential on Metered Letter volume.

C. Dockets No. R2017-1 and No. ACR2016

We treat these two dockets together, since GCA's comments in both covered much the same ground.

In Docket R2017-1, the Postal Service increased the Metered Letter differential to three cents. Once again, it provided no supporting information on either the cost justification for or the volume effects of the differential. These omissions were especially relevant in view of the large size of the new differential and its effect on both non-eligible mailers and the rates it implied for Presort letters.

GCA's Comments in Docket R2017-1 (incorporated by reference in the ACR comments) discussed in detail the distorting effect of a purely promotional Metered Letter rate on Presort prices. The metered letters benchmark established by Order 1320 was a *cost* benchmark. There was, at that time, no separate rate for metered letters, and the Commission's project was to identify a subgroup of single-piece letters particularly suitable for conversion to worksharing and use its costs as a basis for workshare discounts. We did not disagree that the Metered Letter rate should be the basis for calculating Presort rates, since the theoretical basis of the latter has consistently been to offer choice of *prices* – allowing mailers in a position to choose a product on the basis of price to select, as between Single-Piece and Presort, the one most remunerative for them. The problem, we explained, was that the Metered Letter rate was a promotional price, and as such, not based on cost. Given the Postal Service's pressing need for revenue, the result of arbitrarily reducing both metered Single-Piece and Presort rates was to impose extra burdens on stamp users.[10]

This problem still exists. With the expansion of the Metered Letter differential to $0.05 – a level well in excess of any cost difference shown in or derivable from published data – it has become worse.

The *Carlson* decision vacated all that part of Order 4875 which dealt with First-Class rates. The R2019-1 Metered Letter rate, though not mentioned specifically in the decision, was thus vacated by the Court's action along with all other First-Class prices. Since it was not changed in the Postal Service's Docket R2020-1 filing, nor in its response to Order No. 5302, we treat the R2019-1 value as still effective. Everything in what follows, however, is applicable to the rates presented in Docket R2020-1.

II. THIS COMPLAINT

A. Statutory basis

The principal basis for the present Complaint is 39 U.S.C. sec. 403(c):

> (c) In providing services and in establishing classifications, rates, and fees under this title, the Postal Service shall not, except as specifically authorized in this title, make any undue or unreasonable discrimination among users of the mails, nor shall it grant any undue or unreasonable preferences to any such user.

In GCA's view, the Metered Letter differential, in its recent and, especially, its R2019-1/R2020-1 form, discriminates unduly and unreasonably against household mailers.[11]

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[10] See Docket R2017-1, *Comments of the Greeting Card Association,* pp. 3-6.

[11] The phrase "except as specifically authorized in this title," which has no analogue in most undue-discrimination provisions, is most readily explained as referring to secs. 3403 and 3626. The price differentials which sec. 3626 requires for preferred mail categories, since they commonly affect like and contemporaneous postal service, might otherwise be thought unduly discriminatory. The same explanation would apply to statutory requirements for a few limited categories of free mail (sec.3403 et seq.). What is clear, in any case, is that a generalized principle such as sec. 3622(b)(4) (pricing flexibility) is not the *specific* authorization the quoted phrase calls for.

The excessive ten-percent increase in the first-ounce stamp price, approved in Docket R2019-1, depends on this discriminatory price, and it too is a subject of the Complaint. This is so because the revenue sacrifice entailed by the differential, and the Presort rates derived from it, taken together with the Postal Service's need to increase prices essentially to the full extent allowed by the cap, have left no category to make up the difference save Stamped Single-Piece Letters.

Consequently, the relief we seek is elimination or at least very substantial modification of the Metered Letter differential[12], recalculation of Presort rates to remove the element of arbitrariness[13] imposed via their construction by reference to the arbitrary Metered Letter price, and corresponding adjustment of the stamp price to a non-discriminatory level.

On the assumption that the panel decision in *Carlson* will continue to govern, it is appropriate to explain why this Complaint is still apposite. The premises of the *Carlson* decision appear to be that (i) Order 4875 did not comply with the reasoned decision-making standard of the Administrative Procedure Act, and (ii) that the Commission is required to consider the objectives and factors of sec. 3622(b), (c) in arriving at a price-cap decision. The decision did not focus on (or even mention) the Metered Letter rate, and the Commission's response in Order 5302 did not affect it. What is significant, however, is that the petition in *Carlson* did not rest on sec.403(c) in the way that the present Complaint rests on it; hence the panel decision, while fully consistent with a discrimination-based complaint against the R2019-1 First-Class rate structure, did not refer to that section.

B. <u>How a section 403(c) complaint relates to previous ratemaking actions</u>

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[12] A remedy which did not remove all the discrimination would of course have to be accompanied by an adequate explanation of why the discrimination left in place was not undue or unreasonable. *GameFly, Inc.* v. *Postal Regulatory Commission,* 704 F.3d 145 (D.C. Cir., 2013).

[13] Which may likewise implicate the avoided-cost rule of sec. 3622(e)(2).

It is all too easy to assume that because the Commission has in the past sanctioned the Metered Letter differential, it is pointless to challenge it under sec. 403(c). In fact, however, the Commission has not previously considered it from the undue-discrimination standpoint. Moreover – whatever may have been true in previous years – the current differential lacks any justification in terms of cost. A discriminatory rate which cannot be defended by pointing to a relevant cost difference is particularly offensive under sec. 403(c).

Controlling status of sec. 403(c). The Commission has explained[14] that the "qualitative" standards of sec. 3622(b) and (c) are applied mainly in annual compliance review (ACR) and complaint settings rather than in price-cap cases. This distinction is now undercut by the *Carlson* decision, but it is not necessary to our position (which, as will be seen, is more in line with the Court's.) It distinguished between these qualitative mandates, as to which it enjoys wide discretion, and several strictly defined "quantitative" standards representing the direct setting of limits by Congress. A further distinction, implicit in the Commission's description of the qualitative standards, is that they form part of the Commission's sec. 3622(a) assignment to establish a modern system of regulating rates and classes. The quantitative standards, on the other hand, govern those areas where Congress made the decision itself rather than delegating it to the Commission. For present purposes, this is the significant characteristic of the quantitative standards.

Sec. 403(c) shares this important characteristic, even more plainly because it is not part of chapter 36 of title 39 and hence is not part of the system the Commission was directed to create using its legislatively-granted discretion. It is an independent Congressional command, imposed on the Postal Service (with the Commission authorized and instructed[15] to enforce it) and incorporating many decades of judicial

[14] Docket RM2009-3, Order No. 536, pp. 16 et seq.

[15] Sec. 3662(a). It may be helpful to point out that even if one were to accept the Postal Service's baseless theory that the Governors, not the Commission, are the deciders regarding individual rates (see its *Notice of Market-Dominant Price Adjustment* in Docket R2020-1, pp. 9 et seq.), this Complaint would be unaffected. Sec. 403(c) is a statutory prohibition directed at the Postal Service; the Governors, therefore,

interpretation on the question of when a rate is unduly or unreasonably discriminatory.[16] It is essentially a holdover from the 1970 Postal Reorganization Act – under which there was no question of the Commission's enjoying discretion in creating a new ratemaking system by regulation – and as such represents Congress's judgment that the then well-understood content of the "undue or unreasonable discrimination" standard should apply to postal prices.[17]

Insofar as the Commission has allowed the Metered Letter differential as an exercise of the Postal Service's pricing flexibility (objective (b)(4)), it has invoked one of the discretionary, qualitative criteria which, as Order 536 explains, may not take precedence over a direct Congressional command. The same analysis which that Order applied to sec. 3622(e) governs as well (and perhaps even more strongly) with respect to sec. 403(c). A price which violates that section cannot be an appropriate exercise of sec. 3622(b)(4) pricing flexibility. It is (to use the Commission's expression in Order 536) "out of bounds" in much the same way as a workshare discount which exceeds avoided cost and has no statutory exception applying to it.

C. <u>What makes a rate unduly or unreasonably discriminatory</u>?

The first requisite is that there be two (or more) groups of customers distinguished from one another in some way other than by the price they pay for their service. In the present situation, we are prepared to accept this as meaning that the discrimination, to be unlawful, must be between groups one of which, for reasons intrinsic to the

may not adopt a rate which violates it, and even the most extravagantly expansive view of their powers would have to acknowledge that limitation on them.

[16] The concept is as old as the Interstate Commerce Act of 1887 and has been transplanted into a number of rate-regulation statutes governing transportation and energy services.

[17] It may be this aspect of sec. 403(c) which led the Commission, at one point in Order 536 (p. 17), to call it a "qualitative" requirement; it does not, like the price cap or preferred rate provisions, set a definite numerical ceiling or a formula by which one can be computed. Use of the term "qualitative," however, does not detract from its status as a direct limitation on the Postal Service's rate-setting latitude, expressing a final legislative decision, and not a standard whose application is committed to the Commission's discretion.

description of the group, cannot make use of the discriminatory rate but must pay a higher one for the same service. Here, the groups are not merely "stamp users" and "meter users," but household and business mailers, respectively. See section II.D., below, where this equivalence is demonstrated.

A second requisite is that the service for which the two objectionably differing prices are charged must be, in the language of the Interstate Commerce Act, "like and contemporaneous." This precondition contemplates that there may be differences in the cost or the nature of the service, or possibly even in its timing, which are sufficient to preclude a finding of undue discrimination. The precondition, however, is satisfied in this case.

Contemporaneity is established in this case simply by the fact that the Stamped and Metered Letter rates are both currently effective and are paid every day by two large groups of Single-Piece Letter mailers.

Like service. Both rates apply to Single-Piece First-Class letters which differ only in the types of indicia affixed to them. As letter mail products, they are otherwise indistinguishable:

- Both Stamped and Metered Letters are entitled to the statutory protections created for First-Class: sealing against inspection and a rate nationally invariant with distance (39 U.S.C. sec. 404(c)).

- The same service standards apply to both types of letters (39 CFR sec. 121.1). Service performance is reported for Single-Piece First-Class Letters/Postcards in the aggregate.[18]

- The same weight, size, and shape limits apply to both Metered and Stamped Letters (*Domestic Mail Manual* sec. 101 1.0).

[18] See Docket ACR2019, LR-USPS-FY2019-29.

- Since First Class is an "anything mailable" category[19], any differences in content between household-origin and business-origin letters are irrelevant.

- In any event, however, many household-origin letters are business-related; bill payments are still the largest content category of household-origin letter mail.[20]

- The Commission has already stated that Metered Letters is not a worksharing category, and the price differential is not a workshare discount.

The only directly reported difference between them is in mail processing cost (we discuss below some other cost differences, which point in the same direction). Most other Postal Service cost data, as filed with the Commission in Dockets ACR2018 and ACR2019, do not explicitly differentiate between Stamped and Metered Single-Piece Letters. This difference is relevant chiefly to the question of whether the Metered Letter differential is cost-justified (GCA believes that it is not[21]), but its present significance is whether the difference negates the proposition that Metered and Stamped Letters receive like service. It does not.

A difference in mail processing operations is not a feature which non-worksharing mailers[22] choose or reject in selecting a postal product. A user of Single-Piece letters, however sophisticated, does not know, when mailing a square greeting card, whether the facer-canceller will successfully process that piece or will reject it for potential manual cancellation. The mailer of a hand-addressed letter cannot know how (by which

[19] *Domestic Mail Manual* sec. 133 3.1.

[20] 3.10 billion pieces in FY 2018 out of a total (bill payments plus all types of personal correspondence) of 5.35 billion. It should be noted that the Postal Service's *Household Diary Study* (from which these volume numbers are taken) treats bill payments in chapter 4, under "transactional" mail, while other household-origin letters appear in chapter 3 ("correspondence").

[21] See section II.E., below.

[22] Users of worksharing categories assuredly do pay attention to differences in processing operations; those differences, and the discounts designed to reflect them, do – in theory and no doubt largely in practice – determine the choice of product. The key distinction, of course, is that in making that choice worksharing mailers commit themselves to providing some subservices rather than buying them from the Service. Single-Piece mailers do not and indeed cannot.

technology) that address will be read in the Postal Service's processing plant. Differences in processing cost between pieces are averaged together in the Single-Piece rate. What the mailer purchases by paying that rate is the service *result*, from collection through delivery, which the statute and operating regulations specify for Single-Piece First-Class letters. Operational distinctions which depend on Postal Service processing equipment and on the behavior of individual mailpieces in that equipment do not imply that the service the respective mailers receive is different.[23]

D. Whom does the undue discrimination harm and who benefits from it?

We begin with the proposition that an undue discrimination claim such as ours requires identification of two groups of customers who differ in some respect other than the price they pay.[24] There are intrinsic differences between household and business users of Single-Piece letters, and these differences are inherent in the way each group uses the mails.

1. Meters are economically infeasible for household mailers

The most evident way to investigate whether a household mailer could switch from stamps to a meter is to compare costs. This can be done starting from a representative household mailing budget.

The monthly household mailing budget. Exhibits 1A and 1B develop such a budget. It is based on Postal Service *Household Diary Study* ("HDS") reports, which tell us how many pieces per week households in various income strata send. The exhibit uses all the income strata, though, as might be expected, it is the highest (over $100,000 p.a.) which sends the most mail. Multiplying HDS weekly outgoing volumes

[23] The same is true of differences in delivery, also discussed below.

[24] We would agree that if there were no difference between the groups save that one used stamps and the other used meters, it would be logically permissible to assume that a member of the meter-using group who found that using stamps would be economically beneficial would switch to stamps (and vice versa). This amounts to saying that the groups are, for sec. 403(c) purposes, not really different. As we show in what follows, that is not our case.

by per-piece revenue reflected in the Billing Determinants provides a weekly postage budget. Since meter costs are usually incurred on a monthly basis, we multiply the weekly budget by 4.3 to obtain a monthly budget.[25]

The largest monthly household postage budget found in recent years is that for the top income stratum in FY 2014: $4.50 per month. We use that budget in the discussion which follows. Using more recent budgets, which are generally smaller, would only amplify the disparities calculated below.

Monthly meter costs. According to www.expertmarket.com/postage-meters/rental, a basic low-volume meter can rent for around $20.00/month. A fair example is the Pitney Bowes Mailstation 2, described on that company's website, which rents for $19.99/month. Exhibit 2 provides further information on both rental and total monthly costs. The approximately $20 price just mentioned is rental only; it does not include postage, supplies, or maintenance. This means that simply renting a meter would absorb, every month, about 4.4 times the amount our specimen household spends on postage for stamped mail.

A monthly budget of $4.50 corresponds, at the current first-ounce stamp price, to $4.50 ÷ $0.55 = 8.18 letters per month. If a meter were used instead, the same volume would cost 8.18 x $0.50 = $4.09. The theoretical saving of $0.41 is clearly insignificant in relation to the $20.00 or so committed to renting the meter.[26]

In this calculation, we used a budget since we are comparing household mailing *expenditures* with the costs of using a meter. If we used, instead, the outgoing *volume* to which the budget applies, the results would be similar. Our $4.50 budget (from FY 2014) represented 9.46 letters/month. At current rates, this volume would require a budget of 9.46 x $0.55 = $5.20. At the Metered Letter rate the budget would be 9.46 x

[25] Average month of 30.4 days ÷ 7 = 4.3.

[26] Note that, again, the comparison ignores the additional cost of paper, ink, and meter maintenance. These are not negligible. As shown in Exhibit 2, the lowest total cost quoted is $35.31/month (Neopost IS-280).

$0.50 = $4.73; again, the saving ($0.47) would be negligible compared to the rental cost of the meter.

2. The problem of scale

The basic Pitney Bowes meter described above can process 18 letters per minute. Neopost's low-volume IS-280 meter also processes 18 letters per minute. Even if our 8.18-piece household sent all those pieces at one time, it would use an 18-piece/minute meter for about 27 seconds per month.[27] Thus the throughput capacity of a basic meter is far greater than a household could reasonably use. This may be clearer if expressed in terms of cost. For our specimen household, the monthly capacity cost of the 18-letter-per minute meter would be $19.99 ÷ 8.18 = $2.44 per piece.[28] Interestingly, the website referred to above contains a table of estimated postage savings at three usage levels: five hundred, five thousand, and fifty thousand pieces per month.[29] This suggests that postage meter marketing works on scale assumptions which rather clearly exclude households as possible customers. Exhibit 2 describes a survey by NDP Analytics of the marketing approach of four major meter suppliers, and demonstrates quite clearly that they market their machines to businesses. The closest approach to a home user is mention of *home office* businesses (Neopost). An optional feature of the Neopost IS-280[30] is the ability to meter separately for as many as ten departments – a capability rather clearly designed for businesses and not household mailers.

It follows that household mailers cannot use meters, and consequently cannot obtain the benefit of the Metered Letter differential. In the interest of completeness,

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[27] 8.18 letters ÷ 18 letters per minute = 0.454 minute; 0.454 x 60 seconds = 27.27 seconds.

[28] This is based on the $4.50 budget. If instead we used outgoing volume, the per-piece capacity cost would be $19.99 ÷ 9.46 = $2.11 – still more than four times the actual postage cost.

[29] The smallest of these throughputs is thus about 61 times the outgoing letters per month calculated for the largest household mailing budget. The corresponding capacity cost per piece is $0.04, as against $2.44 for the household. And postage savings are only part of the story. The same website asserts that the average small business "wastes" one day per month on manually processing its originating mail, implying a significant labor cost saving from using a meter.

[30] See https://www.neopost.com/postage-meters.

however, we must deal with the potential objection that using a postage meter is not the only way to qualify for that rate: letters paid with PC Postage are also eligible.

3. PC Postage

The theoretical objection that household mail users can obtain the Metered Letter rate by adopting PC Postage in lieu of stamps fails in practice, first, because PC Postage is an insignificant part of the Single-Piece Letter mailstream. The vast majority of household mailers use stamps, and – significantly – this has continued to be the case for several years.

The proper starting point for this comparison is a statistic we have labelled "Net Single-Piece Letters." A fairly large component of the Single-Piece mailstream is paid by permit imprint. As we have done in the past[31], we have subtracted this fraction of the mailstream because a mailer large enough to use a permit may be assumed to possess at least one meter – making the promotional justification for the differential irrelevant as to it.

We have assumed that indicia reported as "Other" are entirely or principally PC Postage. Table A shows the percentage of Net Single-Piece Letters represented by Other indicia[32]:

TABLE A. "OTHER" INDICIA

FISCAL YEAR	PCT. OF NET SGL-PC. LTRS.
FY 2019	0.10%
FY 2018	0.14%
FY 2017	0.09%
FY 2016	0.11%
FY 2015	0.11%
FY 2014	0.17%

[31] See Docket ACR2014, *Initial Comments of the Greeting Card Association,* p. 5 and fn. 5. Removing these letters also adds an element of conservatism to our estimate of the percentage of Single-Piece Letters paid with PC Postage.

[32] Underlying Other Indicia data from Postal Service Revenue, Pieces and Weight by Shape and Indicia reports. See Exhibit 3 for the data and calculations.

Since PC Postage consistently accounts for less than 2/10 of one percent of Net Single-Piece Letters, it can be ignored for purposes of this Complaint. There is no discernible up-trend in its use. The overwhelming majority of household mailers will continue to use stamps. Besides, there is no reason to assume that all or even most pieces paid with PC Postage are sent by households rather than businesses. [33]

4. Discrimination against household mailers

The discussion so far has demonstrated that the Metered Letter differential discriminates against household mail users for the benefit of business mailers. Showing that this discrimination violates sec. 403(c) requires us to take up several other topics.

E. The Metered Letter differential in relation to costs

> An unjustly discriminatory rate affords favored service to those eligible under the tariff, and deprives those not eligible of equal treatment. In addition, rates that are uneconomic and unreasonable injure the traveling public either by jeopardizing the financial stability of the air carriers, or by forcing those persons not eligible to travel at the reduced rate to bear a greater and undue portion of the costs of operation. This shifting of operating costs results in placing an oppressive burden on the portion of the public not afforded the reduced rates.

Of particular interest here are the last two sentences of this quotation from *Transcontinental Bus*[34]*.* We have built up an estimate of the relation between the cost difference between Stamped and Metered Letters and the Metered Letter differential in three discrete steps. The first uses the explicitly reported mail processing cost difference, which shows only volume variable costs separately for Stamped and Metered Letters. The

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[33] Indeed, there is some reason to assume the opposite. A useful article – "It's a Draw: Postage Meter vs. PC Postage," by Adam Lewenberg, *Mailing Systems Technology* 32:3 (May-June 2019), p. 28 – demonstrates that PC Postage has considerable utility for business mailers.

[34] *Transcontinental Bus Corp.* v. *Civil Aeronautics Board,* 383 F.2d 466 (5th Cir., 1967) (fn. omitted).

second develops an estimate of *total* mail processing cost difference; and the third adds the difference in delivery cost – both of these, as calculated by the Commission in its Library References issued in Docket ACR2018. All three calculations show that the differential is substantially greater than the respective cost differences. We have kept them separated in the discussion which follows because they use data from two different years; the results, however, are sufficiently striking to make our point.

Analysis using volume variable mail processing costs. The Metered Letter differential, at its previous level of $0.03, exceeded what was then the volume variable cost difference between stamped and metered letters, as shown in the only publicly available cost report for that period which directly separates the two categories. See Exhibit 4, which includes the calculation for FY 2016 – FY 2019.[35] In Docket R2019-1, the differential was increased by two-thirds, indicating that it exceeded the FY 2018 volume variable processing cost difference by a much greater margin. The data for FY 2019 show that this is still the case.

In summary:

- The differential instituted in Docket R2017-1 ($0.030) was 113.30 percent of the volume variable cost difference ($0.0265).

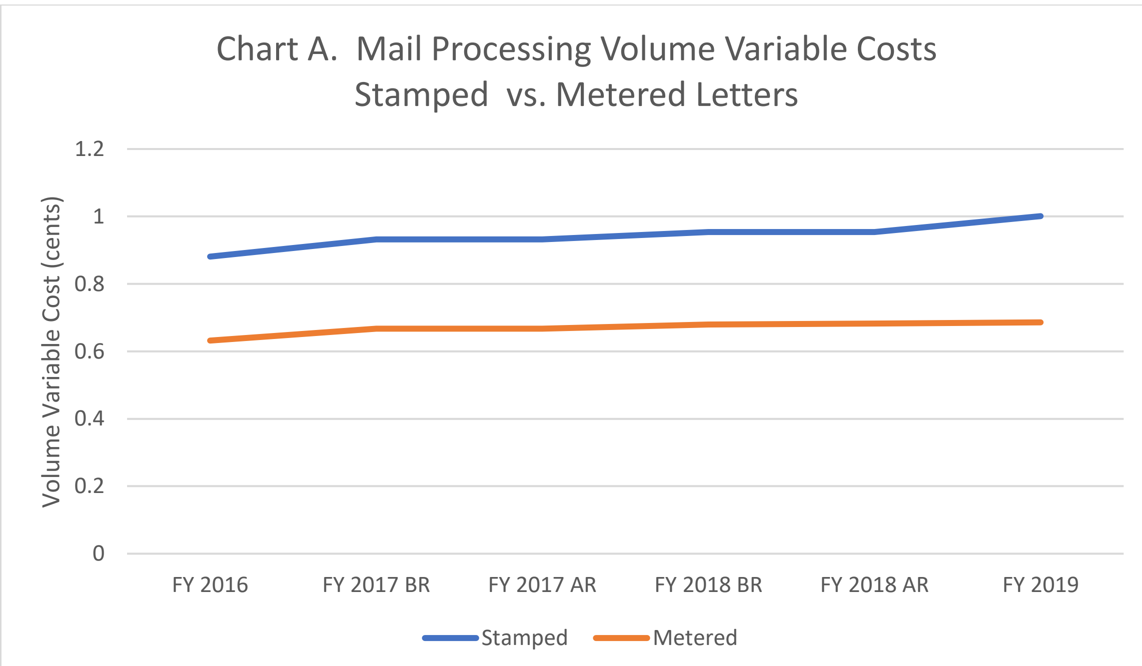
- In FY 2018, before rates, the differential was 109.49 percent of the volume variable cost difference of $0.0274.

- In FY 2018, after rates, the differential (still $0.030) was 110.66 percent of the volume variable cost difference ($0.0271).

- The data for FY 2019 show that the differential, now $0.05, is 158.74 percent of the volume variable cost difference ($0.0315).

[35] In this Exhibit, as elsewhere, "BR" means "before rates" and "AR" means "after rates."

The cost difference varies little from period to period, making it most likely that at the $0.05 level approved in Order 4875 and still in effect the differential will continue to exceed cost difference by a substantial amount. It clearly did so in FY 2019. Chart A tracks mail processing volume variable cost over the last few years.[36] It shows that the $0.05 differential greatly exceeds the difference in volume variable processing cost, which in FY 2019 was $0.0315.



Step Two: Estimating total mail processing cost. While only volume variable processing cost is reported directly for Stamped and Metered Letters, it is possible to estimate the *total* mail processing cost separately for the two sub-types. Exhibit 5 shows how this is done; .it uses PRC-LR-ACR2018-3 from Docket ACR2018. The total processing cost for Metered Letters is reported as $0.13334. The total processing cost for

[36] The data are from Docket ACR2019, LR-USPS-19-26.

Stamped Letters is then estimated as $0.15663, as described in the Exhibit. The difference, then, is $0.02329 – somewhat smaller than the FY 2019 volume variable cost difference shown earlier, and thus, pro tanto, still more indicative of a Metered Letter differential exceeding the cost difference.

Step Three: Delivery cost. In Docket ACR2018, LR-PRC-ACR2018-8 also shows a difference in delivery cost. While the Postal Service, in introducing the Metered Letter differential as a potential cost reduction, did not refer to delivery[37], the difference is of interest as indicating a *lower* delivery cost for Stamped Letters. See Exhibit 6. Totaling the three cost categories shown (City Carrier In-Office, City Carrier Street, and Rural Carrier), we see a Stamped Letter delivery cost of $0.0982 and a corresponding Metered Letter delivery cost of $0.1129.[38] Unlike mail processing, the cost difference in delivery strongly favors Stamped Letters, meaning that it becomes a negative component in computing the cost difference between the two letter types. This is relevant because we are, after all, dealing with a discriminatory relation between two unit prices each supposedly reflecting all the costs of providing the (identical) service. And if – using just the published cost statistics – we add together that difference in volume variable processing cost ($0.0271 in favor of Metered Letters) and the difference in delivery cost ($0.0147 in favor of Stamped Letters, i.e., -$0.0147) – that is, the first and third steps in the analysis set out above – the result is a cost advantage for Metered Letters of only $0.271 – $0.0147 = $0.0124. On this basis, the current price break for these letters thus is four times the cost difference so calculated ($0.05 ÷ $0.0124 = 4.032).

If instead of volume variable processing cost we use the total processing cost developed via Step Two along with delivery cost, the cost difference is only $0.02329 -

[37] See Docket R2013-10, *United States Postal Service Notice of Market-Dominant Price Adjustment,* p. 20.

[38] We do not intend to speculate as to why this is true, except to note that (i) bill payments account for a very large fraction of Stamped Letters (see fn. 20 on p. 11, above), and (ii) since many if not most bill payments are "non-delivered mail" – being addressed to P.O. Boxes or firm hold-outs – they do not receive delivery service in the ordinary sense. See Docket RM2010-13, Order No. 1320, p. 23, on the significance of the "delivered/non-delivered" factor.

$0.0147 = $0.00859, or much less than one-fifth of the price differential. Table B summarizes these results:

TABLE B. COST DIFFERENCE VS. DIFFERENTIAL – SUMMARY

Costs Considered	Cost Difference	Price Differential	Differential / Cost Difference
Vol Var Mail Proc[39]	$0.0315	$0.05	1.587
Total Mail Proc	$0.0233	$0.05	2.146
Vol Var Mail Proc + Delivery	$0.0124	$0.05	4.032
Total Mail Proc + Delivery	$0.0086	$0.05	5.814

Since these costs appear not to vary greatly from year to year, it is most probable that if corresponding total processing cost and delivery cost figures for FY 2019 were available, they would point to a very similar conclusion. For instance, if we were to scale up the FY 2018 cost difference values in the last three rows of Table B by the ratio between the FY 2019 and FY 2018 volume variable mail processing costs (1.1624), the cost difference for total mail processing cost plus delivery would be $0.0100.

A discriminatory price which is not justified by a difference in cost-to-serve, as the Fifth Circuit observed, forces non-eligible customers to bear "a greater and undue" portion of operating costs. That is what is happening here, in violation of sec. 403(c).

Workshare discount rules distinguished. It is important to distinguish between this last proposition – which speaks to one of several issues involved in finding a price unduly or unreasonably discriminatory – and the avoided-cost rule specific to workshare discounts governed by sec. 3622(e). GCA understands that neither the Commission nor the Postal Service considers the Metered Letter differential to be a workshare discount. Neither do we. The role of cost justification vel non is quite different in a rate discrimination context. It has long been understood that even a price difference which

[39] FY 2019 value.

is cost-justified, and in that respect legally reasonable, may still be discriminatory if certain other facts about it are established. *Interstate Commerce Comm.* v. *Baltimore & Ohio Railroad,* 145 U.S. 263, 277, 12 S. Ct. 844, 848, 36 L. Ed. 366 (1892). Under sec. 3622(e)(2), on the other hand, a discount shown to be equal to or (within limits) less than avoided cost is prima facie lawful.

F. <u>The Metered Letter rate is “unreasonable” within the meaning of sec. 403(c)</u>

We have, up to this point, shown that the Metered Letter differential discriminates against household mailers in favor of businesses, and that it is far from justified by difference in cost-to-serve. These are not its only flaws.

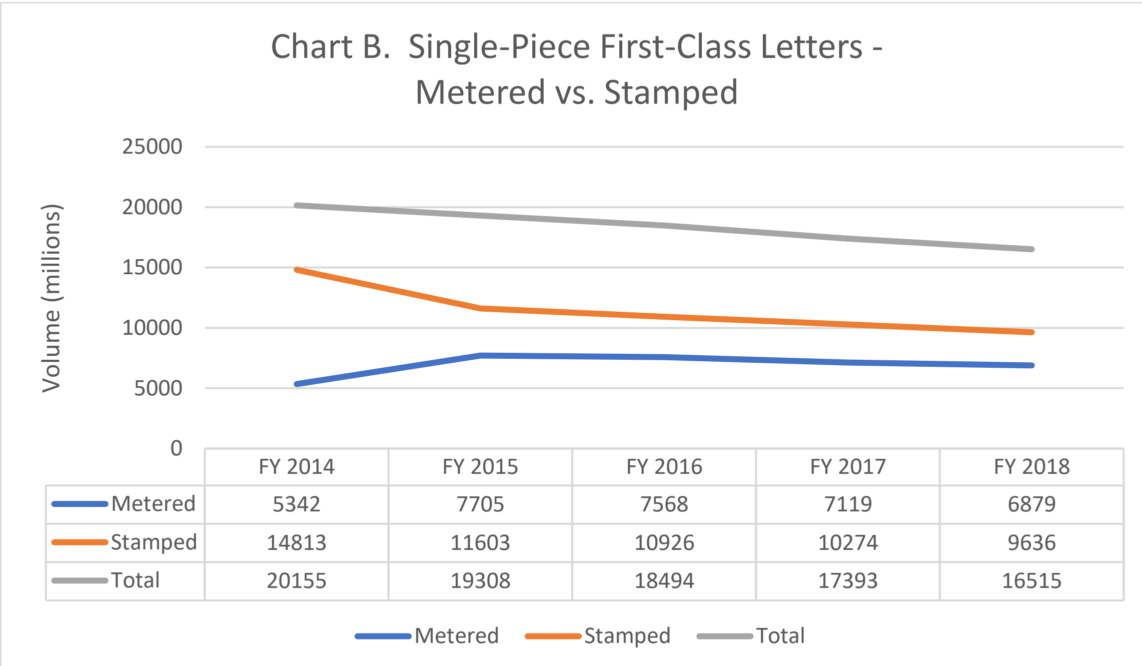
1. The Metered Letter rate has failed in its declared purpose as a promotion

It is established that a promotional purpose is not sufficient, by itself, to save a price which would otherwise be held unduly or unreasonably discriminatory. *Transcontinental Bus,* supra. On the other hand, such a purpose does not, by itself, make the price unlawful. The Postal Service represented the Metered Letter rate as promotional, its intent being to persuade “small and medium-sized businesses” now using stamps to convert to metering.[40] The question we raise here, accordingly is whether the sacrifice of revenue entailed by the Metered Letter differential is outweighed by gains in volume or net revenue. (We specify “net revenue” because the Service hoped for reduced operating costs if and when more mailers and more letter mail converted to meters.) If the sacrifice were small enough to be outweighed by volume or net revenue gains, one might try to defend the differential as cost-justified on a product-wide basis – though this would not necessarily save it from a finding of undue discrimination. But in fact, it is not.

Volumes reported by the Postal Service in its Billing Determinants filings show that there has been essentially no gain, absolute or relative, in metered volume. Exhibit 7 presents the data for the first five fiscal years in which the Metered Letter differential was offered. FY 2019 is treated separately, since it may be that current information

[40] See Docket R2013-10, *United States Postal Service Notice of Market-Dominant Price Adjustment,* pp. 18-20.

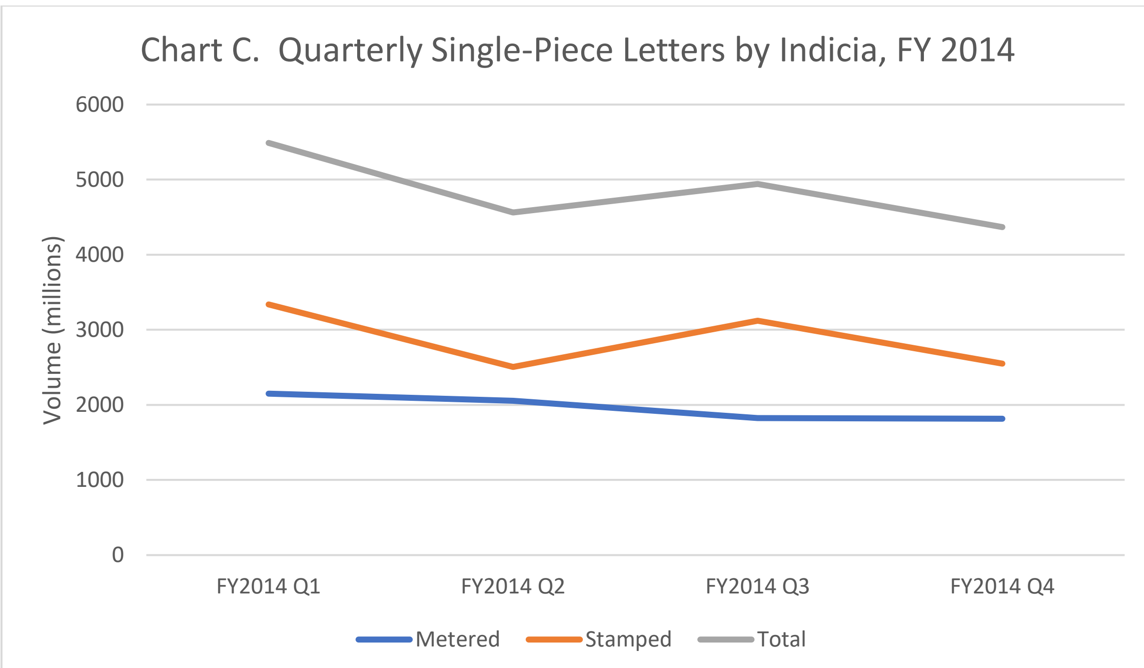
would be thought most useful. Here, as elsewhere, we have eliminated permit imprint volume on the ground that large, permit-using mailers may be presumed to have at least one meter as well, and so to have no interest in the “promotion.” We labeled this statistic “Net Single-Piece Letters” (p.15, above). Chart B shows the trends for Metered-eligible and non-Metered-eligible letters:



“Total” here refers to Metered and Stamped Letters added together, and the other two lines show Metered-eligible and non-Metered-Eligible letters. From FY 2015 on, the trends are fairly close to parallel. It is important, however, to explain what appears to be a significant uptick in Metered Letters between FY 2014 and FY 2015, and a downturn in Stamped Letters. This is an artifact of the data source – not a real-world increase.

Chart B utilizes Billing Determinants data. The Metered Letter rate, established in Docket R2013-10, became effective part way through FY 2014; the split second quarter was computed using the Postal Service’s ratio included with the Billing Determinants filing. Billing Determinants volume data are dependent, in a way that RPW data are not, on the rates actually tariffed during the quarter in question. In FY 2014 Q1 and part of FY2014 Q2, the Metered Letter rate did not exist. Letters paid with meter or IBI or PC postage indicia were reported together with stamped and PVI letters, in "Single-Piece Letters." In other words, Metered Letter volume, for Billing Determinant purposes, had no statistical existence before initiation of the Metered Letter rate.

Since this problem is specific to FY 2014, it is useful to examine that year quarter by quarter – this time, using RPW data (for which see Exhibit 8) – to determine whether the apparent trend shift can be better explained. Chart C, using the same line definitions as Chart B, does this:



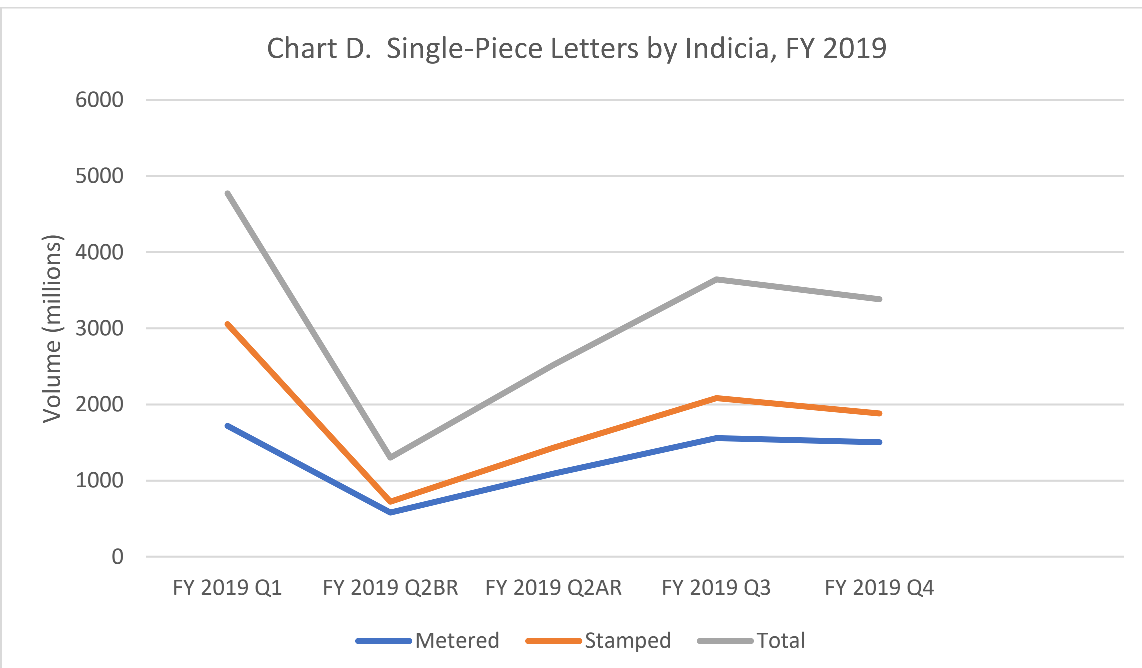
Most of the quarter-to-quarter fluctuations in Single-Piece letters appear to be caused by Stamped Letters. The drop in Stamped Letters between Q1 and Q2 is unremarkable, since holiday mail falls mainly in Q1.[41] The overall picture – which in this case does

[41] The absence of any corresponding decline in Metered Letter volume also suggests that the user groups are very different; many if not most business mailers would be expected to have a relatively much smaller seasonal peak in Q1.

not depend on what rates are tariffed at any given time – shows clearly that FY 2014 did not see an increase in metered letter volume.

Since then, as Charts B and C between them show, the picture has not significantly changed. Between FY 2015 and FY 2018, Metered Letter volume fell by about 10.7 percent. Between FY 2017 and FY 2018, when the price differential increased to $0.03, the decline in Metered Letter volume was still about 9.1 percent.[42]

We focus next on the most recent fiscal year, which shows no significant change in the FY 2014-2018 pattern. Chart D shows the trends for FY 2019. Nothing in this Chart suggests changing the inferences to be drawn from the preceding Charts.



In summary: a price differential which has not succeeded in increasing metered volume, and which exceeds the reported cost saving from substituting meter indicia for stamps, is unreasonable for those reasons alone. When, as here, it forces other Single-

[42] Another potential indicator, not currently available to us, is discussed in Attachment II.

Piece letter mailers to make up the revenue shortfall, it is unduly and unreasonably discriminatory within the meaning of sec. 403(c).

2. The differential is probably superfluous

By calling the Metered Letter differential "superfluous" we mean that it is very likely to be extending a substantial rate advantage to mailers who are already using meters to pay for all the Single-Piece letters they send or are likely to send. The result is to sacrifice revenue for no countervailing benefit in the form of additional volumes of less costly mail.

The Metered Letter "promotion" is thus very different from the various promotions the Postal Service has initiated to encourage the use of new technologies.[43] The postage meter is an old technology. If we take as a starting point the Pitney Bowes Model M, introduced in 1920 and singled out by the American Society of Mechanical Engineers as an "International Historic Mechanical Engineering Landmark,"[44] it has been available for a century. As meter manufacturers' advertising materials emphasize, using the machine for any substantial originating volume generates operational savings for the user. (Consider the probable difference in labor cost between a "basic" meter handling 18 pieces per minute and a human worker applying stamps to the same number of letters, one at a time.) And this is true *regardless of any difference in per-piece postage.*

Taken together with the lack of any perceptible volume effect in Metered Letters since the differential was introduced, these facts strongly suggest that meter-using mailers have received a price break to induce them to do what they had been doing already. This is not a new issue in postal ratemaking. In the 1970s, there was concern that

[43] See, e.g., the discussion of the Emerging & Advanced Technology promotion at Docket R2020-1, *United States Postal Service Notice of Market-Dominant Price Change,* p. 20. It is also noteworthy that this promotional rate, like others, is time-limited (in this case, March through August of 2020). All the First-Class Mail promotions explained in that *Notice* are similarly short-lived. By contrast, the Metered Letter differential, related to a technology neither "emerging" nor particularly "advanced," has been in effect continuously – though in varying amounts – since 2014.

[44] See https://www.asme.org/about-asme/engineering-history/landmarks/114-pitney-bowes-model-m-postage-meter

introducing presort discounts could simply fatten the wallets of mailers already presorting for service quality reasons and thereby force non-worksharing mailers to make up the shortfall.[45] The Commission took this possibility seriously, and should do the same regarding the issue we raise here.

G. Effect on the financial position of the Postal Service

Our focus to this point has been on the unduly and unreasonably discriminatory nature of the Metered Letter differential, and on how sec. 403(c), without more, requires a remedy. We suggest that the Commission consider some other policies of ch. 36 which the differential affects adversely. Quite apart from the *Carlson* panel's holding that the Commission must consider the sec. 3622 objectives and factors in a price-cap case, those provisions clearly fall within the purview of sec. 3662(a). They thus are appropriate for consideration in a complaint proceeding, whatever view one takes of their place in a price-cap docket.[46]

1. Revenue adequacy

Sec. 3622(b)(5) calls for adequate revenue for the Postal Service; any unnecessary sacrifice of revenue would prima facie contravene this policy. The preceding discussion shows that the Metered Letter rate causes such a sacrifice. It does so in two ways: first, by needlessly reducing revenue from Single-Piece letters, and secondly by depressing the Presort rates calculated from the Metered Letter price. We deal here with the first problem.

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[45] The Commission's early circumspection regarding workshare discounts, and its subsequent change of approach when it had become clear that the discounts in fact were generating new workshared volume, are summarized at PRC Op. R84-1, ¶¶ 5136 et seq. We have no such assurance here, and the information we do have points to the opposite conclusion.

[46] We emphasize this distinction partly because the Commission's proposals in Order No. 5337 (Docket RM2017-3) show that it does not at this time consider them apposite in a price-cap docket.

A simple estimate of the rate and revenue effects of correcting the undue discrimination is developed in Exhibits 9,10, and 11. We have done this on two models. The first resets the Metered Letter rate at a level justified by the cost difference. To provide an idea of the possible range of results, we have used the largest and the smallest cost differences we computed earlier: total mail processing cost plus delivery cost, and volume variable processing cost only.

The second model simply eliminates the differential, as nearly as possible while observing the whole-cent stamp convention.[47]

Now that FY 2019 volume information is available, we used those volumes, but applied first current and then modified rates to them. This produces a usable approximation of the effect of changing the Metered Letter differential. The second approach uses hypothetical rates, arrived at by applying the 2.497 percent First-Class Mail cap space in Docket R2019-1 to *both* the Stamped and Metered Letter categories. Note that only the first of these exercises reflects an actual correction of the undue discrimination. The second shows, most obviously, how badly the Metered Letter rate would fail to satisfy the cost-justification test even if it and the stamp price had been raised identically by the cap space percentage.

First, the calculation starting from actual rates: Exhibit 9, part I, tells us that if the Metered Letter rate were merely raised, first, to a level reflecting only variable processing costs it would be $0.523 ($0.55 - $0.0271), and if total revenue is held constant, the stamp price would be (theoretically) $0.534. This corrected Metered rate is labeled “Corrected Rate A” in the Exhibit. If instead of holding total revenue constant we hold the stamp price at $0.55 (Exhibit 9, part II), there would be a revenue gain of about $149.3 million.

Next, we use total processing cost plus delivery cost. This is necessarily a less helpful calculation because, for reasons explained in connection with Table B, above, it must either use FY 2018 data consistently or combine volume variable processing cost

[47] Since the Postal Service does not calculate own-price elasticities separately for Stamped and Metered Letters, it is impossible to estimate the volume effects of changing these prices.

from FY 2019 with FY 2018 figures from the FY 2018 ACD. We have used the former approach. The cost difference is then $0.00859, which would generate a Metered Letter rate of $0.55 - $0.00859 = $0.541 ("Corrected Rate B"). If we held total revenue constant in this case, the result would be a stamp price *lower* than the Metered Letter rate, which simply shows that revenue should *not* be held constant if we are to achieve a realistic result. We therefore "release" that hold and find that – leaving the stamp price at $0.55 – there is a revenue gain of about $269.9 million.

Exhibit 10 estimates the rates which would result from eliminating the Metered Letter differential – or, more precisely, arriving at the result nearest to eliminating it which can be squared with the whole-cent convention for stamped letters. First, we used a constant total Single-Piece revenue to estimate these rates, so part I of the Exhibit does not show a revenue gain. The results are affected by the need to observe the whole-cent convention; the calculated stamp rate is $0.529, which we rounded to $0.53. With a $0.53 stamp rate, the Metered Letter rate would theoretically be $0.528. If we then merge the two categories (part II of the Exhibit), so that all Single-Piece Letters pay the $0.53 rate, there is a small ($12.1 million) revenue increase.

In considering the effects of the price caps actually available, we have focused on the case (R2019-1) in which the Metered Letter differential was increased to $0.05. Exhibit 11 starts with FY 2018 rates and volumes, and increases both the Metered and Stamped Letter prices by the 2.497 percent available in Docket R2019-1. Doing this produces a Stamped Letter price of $0.512, which must be rounded to the nearest whole cent ($0.51). When all this is done, the implied revenue gain is $177.1 million. Note, however, that this exercise only underscores the disparity in rate treatment in Docket R2019-1, when the stamp price was raised ten percent – substantially more than either the Metered Letter rate or Presort rates. It does *not* correct the discrimination inherent in the Metered Letter differential. Even if that rate were adjusted to reflect no more than the difference in volume variable processing cost, it would be $0.523 rather than the $0.482 generated by applying the 2.497 percent increase.

These exercises illustrate the depressing effect of the Metered Letter differential on revenue and the problems it creates in relation to the adequate revenue objective.

The $269.9 million increase in revenue from correcting the Metered Letter rate (Exhibit 9) equals more than five percent of *total* Stamped Letter revenue calculated in that Exhibit. It is more than seven and a half percent of total Metered Letter revenue. Yet these rates were the outcome of a case in which available cap space for First Class was about two and a half percent.

As long as Presort rates are calculated on the basis of the Metered Letter rate, the overall revenue effect of these changes would clearly be much larger than the effects within Single-Piece. This is a more complex issue, however, and so is dealt with separately, in section III below.

2. A just and reasonable schedule of rates

Section 3622(b)(8) calls for a "just and reasonable schedule for rates and classifications," which the ratemaking system is to "establish and maintain." A rate which is unduly and unreasonably discriminatory clearly is inconsistent with this requirement. It is important that objective (b)(8) requires a just and reasonable *schedule* of rates, so that relationships among rates – and not just individual rates considered in isolation – must be just and reasonable.

3. Pricing flexibility

Since the Commission has in the past relied on section 3622(b)(4) to justify the Metered Letter rate, we must discuss it further here.

As we observed earlier (pp. 8-9), sec. 403(c) is a direct Congressional command, which cannot be outweighed by reliance on one of the qualitative, discretionary principles of sec. 3622(b), (c). In other words, while a promotional rate for one sub-type of Single-Piece letters which was *not* unduly or unreasonably discriminatory might be a permissible exercise of pricing flexibility, a rate which does fall foul of sec. 403(c) cannot be. At the time the Commission invoked sec. 3622(b)(4), the Metered Letter rate might have been defended by showing that the differential was less than the cost difference.[48]

[48] Though, as noted earlier, the Postal Service has never undertaken to demonstrate this.

Today, it is not; and for that reason, among others, cannot be deemed an appropriate use of pricing flexibility.

4. Incentives to improve efficiency

In view of the excessive size of the Metered Letter differential in relation to cost difference and its failure to attract new Metered volume, it could hardly be said that the differential promotes the objective of sec. 3622(b)(1) – maximization of incentives to improve efficiency and reduce costs. Since it has not drawn new metered volume, it has not increased cost savings. If "efficiency" is understood, as it should be, to refer to overall efficiency (improvement of both consumer and producer surplus), the losses it entails *reduce* efficiency. Sec. 3622(b)(1) does not mean that a price feature plausibly labeled an incentive to efficiency must for that reason be made as large as possible, regardless of its net effect on the Postal Service's finances.

III. RELATIONSHIP TO PRESORT RATES

A. Background

As noted earlier, Presort rates are necessarily involved in this Complaint, since they are computed on the basis of the Metered Letter price we are challenging.

GCA, however, is not claiming that the set of Presort rates, or any member of that set, violate sec. 403(c). This is so because, unlike users of the two indicia-differentiated, but otherwise indistinguishable, subtypes of Single-Piece Letters, users of Single-Piece and Presort Letters are not similarly situated. The services they respectively receive, though "contemporaneous," are not "like." Users of Presort assume, in varying degrees, responsibility for some functions which Single-Piece mailers necessarily have performed by the Postal Service. Current service standards incorporate a limited opportunity for local Presort letters to obtain overnight delivery, which is unavailable for Single-Piece. This means that the normal understanding of "undue and unreasonable discrimination" does not apply to the relationship between them. Consequently, we must find a way to accommodate a corrected set of Single-Piece Letter rates to the Presort rate system.

B. The nature of the internal rate relationship

As matters stand today, Presort rates are based on a Metered Letter rate which evidently does not correspond to the metered letters benchmark established by Order No. 1320. The intent of that Order was to put in place a realistic cost base for work-share discounts, using for that purpose the group of Single-Piece letters most likely to convert to worksharing.[49] At the time Order 1320 was issued, there was no separate rate for metered letters. Instead, the Commission identified the requisite "conversion-ready" sub-type of Single-Piece letters and established its average cost.

Until FY 2018, the (theoretical) disconnect between metered-letter *cost* and the Metered Letter *rate,* may have been – in practical terms – unproblematic. The Metered Letter differential, at $0.01 or $0.005, appears to have been less than the cost difference between the two sub-types of Single-Piece letters. Starting in FY 2018, with the differential increased to $0.03, this was no longer true; and as the FY2019 results show, it is even less true with the differential at the $0.05 level approved in Order 4875.

It may be convenient to compute Presort prices from a tariffed rate rather than a set of current costs, but it is still impermissible to do so from a rate which significantly underrepresents those costs. This is all the more true when – as recent R-dockets illustrate[50] – the Postal Service is compelled, as a practical matter, to increase prices as near to the cap as circumstances permit. If Presort rates are understated by reason of being calculated from a Metered Letter price unconnected with actual cost, stamp-using Single-Piece mailers must make up the shortfall. And as we have shown above, this

[49] See, e.g., Order 1320, pp. 3-4, 11.

[50] In Docket R2020-1, the available cap space for First Class, as initially calculated by the Postal Service, was 1.9333 percent, of which it purported to use1.919 percent. In Docket R2019-1, available cap space for First Class was 2.497 percent, of which the Service (by its calculation in the *Notice)* used 2.486 percent. For Docket R2018-1, the corresponding figures were 2.005 and 1.905 percent; and for Docket R2017-1, 0.804 and 0.780 percent.

means that household mail users must fill the revenue gap created for the benefit of business mailers.

C. A possible solution

To eliminate the Metered Letter differential without a sudden increase in Presort rates seems to require a return to the theory underlying Order 1320: calculation of work-sharing rates from a *cost* benchmark rather than from a tariffed rate bearing no apparent relation to costs. Under present circumstances, indeed, Presort rates, constructed as they from that Metered Letter rate, could equally well be labeled "arbitrary."

If the Metered Letter differential were eliminated completely, the obvious next step would be to return to the Order 1320 approach. For reasons explained in that Order, using *all* Single-Piece Letters as the benchmark would be inappropriate.[51] If the differential were, instead, reduced so that it equaled the cost difference[52], the distinction between basing workshare rates on the Metered Letter rate and basing them on the cost benchmark might in practice be small, since metered letters need not follow the whole-cent pricing convention. The more straightforward approach in designing Presort rates, however, would be to use the cost benchmark in that case also. Presort rates so calculated would reflect the cost actually avoided as between conversion-ready Single-Piece letters and those actually entered in a Presort category.

GCA makes this suggestion, first, because we understand the limits of the legal rule we are primarily invoking, and, second, because sec. 3622(c)(3) requires the Commission to consider the risk of "rate shock." Rebasing Presort rates on the Order 1320 cost benchmark would place worksharing mailers approximately where they were before the Metered Letter differential began to exceed the cost difference between metered and stamped letters. In GCA's view, the principles laid down in Order 1320

[51] See Order No. 1320 at 9, 11. Our explanation (section II.D., above) of the intrinsic differences between household and business mailers also shows that household-origin letters are prohibitively unlikely to be "conversion-ready" and thus have no place in a cost benchmark established on the principles laid down in Order 1320.

[52] And, of course, monitored regularly so that this relationship is maintained.

indicate that – considered simply as a matter of worksharing rate theory[53] – that is where they should be.

IV. RELIEF REQUESTED

Sec. 3622(c) empowers the Commission, inter alia, to "order[ ] unlawful rates to be adjusted to lawful levels." Such remedy is available in case of violation of sec. 403(c), and of provisions of ch. 36. Both such violations have been shown above. In this case, accordingly, GCA asks the Commission to order adjustment in the rates for Single-Piece First-Class Letters and in the method of constructing Presort rates, as follows –

A. To eliminate the separate Metered Letter rate and adjust the resulting unitary rate for the first ounce of Single-Piece Letters to a level which will provide, for First Class as a whole, substantially the same revenue as contemplated by the decision in Docket R2019-1; or, should this remedy be for good and sufficient reasons be denied, and as a second-best alternative only,

B. To adjust the Metered Letter rate to a level at which the differential between it and the Stamped Letter rate does not exceed the difference in cost, as explained in the body of this Complaint, between Stamped and Metered Letters;

C. To adopt, in either case, a corrected technique for construction of Presort rates, whereby cost avoidances from worksharing are subtracted from the metered letter benchmark cost, rather than from any still-existing Metered Letter rate;

D. More generally, to reformulate Single-Piece First-Class Letter first-ounce prices to conform to the remedies adopted pursuant to paragraphs A. through C. of this section, and to prescribe such reformulated rates pursuant to its authority under 39 U.S.C. sec. 3662.

[53] We add this qualification to emphasize that basing Presort rates on a correct metered letter cost would not by itself remedy the violation of sec. 403(c). It would simply put a stop to the cascading revenue loss occasioned by basing them on the present Metered Letter rate.

January 30, 2020

Respectfully submitted,

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